IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.26 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
CAMA HOTELS LTD. - Respondent(s)

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Appearance :
MRS MM BHATT for Applicant(s) : 1,
MR MJ SHAH for MR JP SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 05/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following two questions under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

1. “Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat swimming pool and the connected filtration plant as plant for the purpose of granting depreciation allowance ?”

2. “Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability pertaining to the last quarter is paid within the time stipulated for filing of return under section 139(1) the provisions of section 43B cannot be made applicable ?”

2. The Assessment Year is 1985-86. It is not necessary to state any facts or contentions in light of the fact that it is common ground between the parties that both the issues raised by the two questions stand concluded.

3. Mr.M.J.Shah, learned advocate appearing on behalf of the respondent-assessee, has conceded to the position that in so far as question No.1 is concerned, it stands answered against the assessee in light of decision in case of Commissioner of Income-tax Vs. Anand Theatres, [2000] 244 ITR 192 (SC).

4. Hence, question No.1 is answered in the negative i.e. in favour of the Revenue and against the assessee.

5. Similarly, Mrs.M.M.Bhatt, learned Standing Counsel appearing on behalf of the applicant-Revenue, has accepted the position that issue raised by question No.2 stands answered against the Revenue by decision rendered by the Apex Court in the case of Allied Motors (P.) Ltd. Vs. Commissioner of Income-tax, [1997] 224 ITR 677 (SC).

6. Hence, question No.2 is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

7. The Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A.MEHTA, J]

Sd/-
[H.N.DEVANI, J]

Bhavesh*